

# Analyzing the Current Issues Surrounding Legalization Surrogacy in China

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## Abstract

The current issues of concern and controversy surrounding China's legalised surrogacy are analysed in this article. The research investigates the history of surrogacy legalization and the ethical considerations in China. This paper employs a secondary research methodology that combines literature reviews, case studies, and policy analysis to examine the likelihood and viability of legalising surrogacy. The findings also consider the variables that must be taken into account during the legalisation process to ensure the objectivity and authenticity of all parties involved. The research concludes by outlining the argument that legalising surrogacy is necessary, along with a number of helpful regulatory measures to guarantee that the rights and interests of women and children are completely protected.

**Keywords:** legalization of surrogacy, ethical considerations, regulatory measures, social implications

## 1. Introduction

### 1.1 Context

Surrogacy is gradually becoming more popular in China as a result of rising infertility rates there and the advancement of assisted reproductive technology. (Shen Z, 2022)

Many couples who lack the ability to bear children but do have some financial resources can raise children through surrogacy, which also helps to solve some of the social issues caused by China's ageing and slowly expanding population (Weis C, 2021). In China, however, medical organisations, laws, and social support all outright forbid surrogacy at the moment. Despite the fact that surrogacy is illegal in China, many go overseas to one of many nations that has legalized the process, including the United States, the United Kingdom, and more than 38 others (Torres G. Shapiro A. & Mackey T. K, 2019). Some nations permit both paid and unpaid forms of surrogacy, while others only permit unpaid surrogacy and only between second-degree blood relatives. In China there are ethical, legal, and social issues surrounding surrogacy include safeguarding the rights of the surrogate mother and the fetus, regulating and monitoring reproductive medicine technology, the legal framework for surrogacy's legalisation, and many others (Li T, 2022). The exploration of surrogacy's legalisation in China presents a difficult challenge because doing so requires protecting the rights and interests of all parties. To continually find appropriate solutions to this problem in order to better meet the needs and interests of the general public, further investigation and research into various aspects will be required.

### 1.2 Rationale

In China, there are roughly 40 million infertile people and the majority of them want to use surrogacy to address their fertility issues, surrogacy is one of the most pressing issues (Qiu Y, 2021). First off, the widespread use of assisted reproductive technologies has increased demand for surrogacy as a result of China's rising rate of infertility each year (Qiu Y, 2021). At the same time, the question of legalising surrogacy is connected to a number of areas, including social, legal, and moral issues, involving ethical, human rights, and medical aspects

(Shen Z, 2022). Consequently, a thorough investigation and analysis of the legalisation of surrogacy is required. Additionally, legalising surrogacy can help China's ageing population and social issues related to slow population growth by giving couples who are unable to have children but have some financial resources the chance to raise them (Weis C, 2021). As a result, there is some social significance and value in making surrogacy legal. China has stricter laws and regulations governing surrogacy than other nations do, including limitations on medical facilities and social support. In order to better understand the current situation and issues in China's social, legal, and ethical aspects, as well as to provide references and lessons for future policy formulation and practise, it is therefore a good idea to study the legalisation of surrogacy in that country and present possible suggestions for the implementation and feasibility of doing so.

### *1.3 Research Aim and Questions*

In order to achieve these goals, the research objectives of this paper are:

- (1) to explore the challenges and problems faced by the legalisation of surrogacy in China, including moral, ethical, legal and medical issues;
- (2) to analyse the prospects and possible solutions for the legalisation of surrogacy in China, including suggestions for learning from the international experience of legalising surrogacy, strengthening the formulation and implementation of laws and regulations, and enhancing social education and publicity.

Based on the above research objectives, the study poses the following research questions:

- (1) what are the ethical, legal and medical challenges facing the legalisation of surrogacy in China?
- (2) What are the potential solutions and feasibility of legalising surrogacy in China?

### *1.4 Project Structure*

This research will be divided into literature review, methodology, findings, discussion to analyze and study the research respectively, and finally summarize the experience to answer the research questions that will be further explored in the subsequent sections.

## **2. Literature Review**

This chapter will examine the current issues and challenges facing the legalisation of surrogacy in China and review the relevant literature with a view to informing and informing further research and practice. Later in this chapter, the research will continue to discuss the resistance to legalise surrogacy in China, as well as the extent to which China will legalise surrogacy and how to address the issue.

### *2.1 China's Current Needs for Surrogacy*

Some literature suggests that China lacks effective legal regulation of surrogacy and is in a legal limbo (Zhai Yidan, 2022). The current Chinese law strictly prohibits medical institutions and medical personnel from performing any form of surrogacy techniques. Although the Measures for the Administration of Human Assisted Reproductive Technology (hereinafter referred to as the Measures) and the Measures for the Administration of Human Sperm Banks promulgated by the former Ministry of Health have explicitly banned any form of surrogacy, they are, after all, departmental regulations with a low legal status, and the penalties are not strong, resulting in the problem of surrogacy not being addressed, and the underground surrogacy market in China instead showing a booming trend (Zhai Yidan, 2022).

The second reason is that China's unique social policies have led to extreme gender bias in certain areas, as well as a really high demand for surrogacy in China. As a result of the establishment of the new China and the stability of the country, newborns and the population exploded and the explosion of the Chinese population directly affected the standard of living of the people. In order to improve the quality of the population and improve the demographic structure the state began to implement the one-child policy (effective period: 1982-2016), the family planning policy was officially written into the constitution and China began to implement family planning (Yiying Qiu, 2021). Secondly, traditional Chinese ideology influenced the surge in demand for surrogacy during this period because people in poor areas of China preferred to have boys as they could do more strenuous farm work and in their minds, having girls was shameful (Yiying Qiu, 2021), a phenomenon that stimulated the creation of surrogacy. Based on China's long-standing one-child policy, the country has seen the social phenomenon of declining fertility rates, an ageing population and a shrinking labour force, so the state has begun to shift to a fertility policy that allows for two children, but with many families too old to have children anymore and some single-parent families whose children have died, the fertility policy has further stimulated the surrogacy market in China (Novaretti Simona, 2021).

Thirdly, surrogacy is the only means of solving fertility problems for those with uterine conditions (Zhu Yiang, 2022). For some women with uterine problems such as anencephaly, endometriosis, cervical cancer, etc., they are unable to conceive and give birth through traditional means. In such cases, surrogacy can be the only option

to help them realise their fertility dreams (Zhu Yiang, 2022).

Because of the large population base of infertility, the emergence of surrogacy technology has provided many high-income families with an opportunity to have a child. (Yiying Qiu, 2021) As China's economy develops and women's power awakens, many independent women are becoming more focused on their image management, wanting to have a child but unwilling to have children on their own for fear of losing their figure (Zhao Yue, 2022).

Fourthly, a large number of the homosexual community need surrogacy to solve their fertility problems (Dana Berkowitz, 2020). This is because homosexuals are unable to conceive and have children naturally in the traditional sense and therefore they need alternative means to achieve fertility. Surrogacy is a viable option that allows homosexuals to have children of their own and in some cases make another woman a biological mother. The reproductive needs of homosexuals have prompted some countries and regions to change their legal frameworks so that they can legally practice surrogacy (Dana Berkowitz, 2020). With some countries allowing homosexuals to use their own sperm or eggs for surrogacy, and others only allowing same-sex couples to do so through anonymous sperm or egg donation (Dana Berkowitz, 2020), people are being forced to redefine the concept of a child in a way that understands 'fatherhood' and 'motherhood', where the concept of a child is not always the result of two heterosexual people having intercourse. This confluence of cultures is slowly opening up surrogacy to the masses (Novaretti Simona, 2021).

## *2.2 Resistance to the Legalisation of Surrogacy in China*

Advancing the legalisation of surrogacy in China requires advance consideration of a number of issues. The first point is that traditional Chinese ethical and moral concepts influence the process of legalising surrogacy. The issue of surrogacy is contrary to traditional concepts and violates natural law. Traditional Chinese culture emphasises the relationship between family and people in society, and surrogacy can distort this relationship (Yiying Qiu, 2021). In traditional Chinese Confucianism, a child needs to be born and raised by the mother herself, which is a mother's duty (Novaretti Simona, 2021).

Secondly, there are a number of legal issues that remain unresolved. These include the validity of the surrogacy contract, the determination of parentage or custody and the registration of the family register. Since same-sex marriage is a major subject of surrogacy, there are no laws in China to protect gay marriage (Zhao Yue, 2022). Existing laws and regulations on natural reproduction are based on traditional reproductive methods, and China's laws and regulations on the issue of surrogacy belong to the missing stage causing contradictions in the application of surrogacy. The lack of specific rules makes it more difficult for judges to protect the rights and interests of the parties, especially women and children (Xiao & Li, 2020). The third point is that to recognise foreign jurisprudence in the conduct of international surrogacy issues is to violate the basic principles of public order in China, that is, to violate Chinese public policy (Zhao Yue, 2022). The issue of surrogacy is a violation of human rights. Reproductive power is internationally recognised as a human right, and it should not be decided by anyone other than the person concerned (Yiying Qiu, 2021).

This last point is a concern on the level of people's minds. Surrogacy exploits women's reproductive rights and violates ethics and the equitable distribution of reproductive obligations (Zhu Yiang, 2022). Surrogacy may exacerbate social injustice. This is because surrogacy requires a certain payment, which means that only the better-off may be able to afford such costs. Surrogacy may therefore make it more difficult for women from poor families to access childbearing opportunities, further exacerbating the gap between rich and poor in society. If surrogacy is legalised, it can lead to stronger women putting heavier reproductive shackles on weaker surrogate women, and surrogacy can instead become the original sin of female objectification (Wang Yanping, 2022). Countries where surrogacy is legal are more likely to treat women as mere tools to bear children, treating their wombs as a tool that can be used to make money, thus creating a social culture of objectifying women.

## *2.3 The Extent to Which Surrogacy Can Be Legalised in China and How It Can Be Addressed*

It is unrealistic to suddenly legalise surrogacy completely when the issue has not yet begun to formally enter the legal process in China, and therefore the extent to which surrogacy is legalised needs to be carefully controlled (Zhu Yiang, 2022). In his study, Zhu Yiang (2022) argues that the first step should be to allow limited surrogacy under the supervision of an official body. Limiting the scope of surrogate parents, China could start by limiting surrogate parents to legal couples with uterine disabilities, one of whom should provide the sperm and the other should be a woman of legally permissible suitable reproductive age and healthy fertility (certified by an official medical body), and if she is married, she would need the consent of her partner. By legalising altruistic surrogacy and prohibiting commercial surrogacy, a distinction can be made between altruistic and commercial surrogacy. The legalisation of altruistic surrogacy would not have too much impact on the public interest and social order (Novaretti Simona, 2021). In China, surrogacy should first be restricted to a minority group; if surrogacy is permitted on all fronts it will affect too much of society, there is more pressure to build the rule of law, and the

acceptance of the people is not yet high enough (Novaretti Simona, 2021). It is possible to start with those who have insurmountable objective barriers to reproduction, and within which the demand for surrogacy should only be justified.

In terms of solutions, the most crucial step is to standardise and guide surrogacy protocols (Zhu Yiang, 2022). The state could issue model provisions. Include mandatory provisions on the rights of vulnerable groups. Review the legality of surrogacy agreements in advance to protect the legal rights of the parties and reduce administrative costs.

States need to work together on the international issue of cross-border surrogacy, and in the short term, regional and bilateral treaties should be introduced for participation to address urgent matters (Zhu Yiang, 2022). The international community should reach consensus on a convention to achieve global protection for surrogate children and mothers as soon as possible. Recognise the identity of surrogate parents and children and negotiate common issues. Adopt legislation to clarify the status of surrogacy and define the criteria for surrogate parents. and list the legal parental designation on the child's birth certificate (Zhu Yiang, 2022).

Secondly, establish a specific value logic to guide the legal provisions of specific lawsuits. Because value conflicts cannot be resolved through legal provisions alone, the issue of judges' discretion must be properly addressed (Xiao & Li, 2020).

### **3. Methodology**

#### *3.1 Introduction*

In this chapter, we analyse the current problems and difficulties associated with legalising surrogacy in China using a secondary research methodology. Secondary research methods, also referred to as integrative analysis or meta-analysis, are a way of synthesising and analysing the results and information from various studies. To support the execution of the study and the formulation of recommendations, the research in this chapter makes use of a variety of research methodologies. The issues and difficulties associated with legalising surrogacy in China can be better understood and handled with the aid of this varied research methodology. The research methodology, data collection, data analysis, theoretical analysis, and study limitations are all covered in this chapter.

#### *3.2 Research Method*

In order to achieve the findings of the thesis, this chapter of the study adopts a secondary research approach. This chapter combines two parts, literature collection and screening and comprehensive analysis, to answer our research questions and provide a theoretical basis for future research. Analysis of the current issue of surrogacy legalisation in China can benefit greatly from the use of a secondary research approach. Firstly, using secondary research to supplement primary research saves time and money because it doesn't require starting a study from scratch, which would take more time and money. As a result, research can be done more quickly and key information can be accessed. Second, using the secondary research method gives you access to trustworthy sources of data like academic journals, government reports, statistics, etc. Rigid quality control has been applied to these informational sources. Since these sources of information have undergone stringent quality control and review, they are more reliable than using first-hand accounts. Additionally, a thorough understanding of the literature and research that has already been done can be obtained by analysing it. The use of secondary research techniques, most importantly, lessens bias because only previously published literature and studies are examined, unaffected by individual bias. By doing this, the issue of inaccurate results brought on by subjective bias is avoided and the research becomes more objective. In conclusion, the analysis of the current issue of surrogacy legalisation in China can greatly benefit from the use of secondary research methods.

#### *3.3 Data Collection*

An analysis of the question of legalising surrogacy in China must start with the collection of data. This paper used academic search engines like CNKI, WanFang Data, and PubMed to find pertinent literature and research reports in order to gather pertinent data. Including journal articles, dissertations, reports, and other types of literature, these databases can be used to find them. Additionally, official government websites and statistical yearbooks are a good place to find information on surrogacy-related laws, policies, and statistics pertaining to social and legal issues.

#### *3.4 Data Analysis*

A qualitative analysis can be used to gain insight into the social, ethical, and legal issues surrounding surrogacy in order to reach the study's conclusions. This essay will conduct a content analysis of the literature and reports on surrogacy in order to comprehend its social and legal ramifications. To understand the current state of research and any gaps in the legalisation of surrogacy, this paper will also summarise and analyse the findings of existing studies using a literature review approach.

### 3.5 Limitations

While the research techniques described above are crucial in examining the legalisation of surrogacy in China, there are some limitations. Firstly, the source and calibre of the literature may be a limitation when using the literature review method. Part of the limitation of the research methodology is the limited number of studies with secondary data i.e. limited articles in China. Lack of or poor quality of relevant literature may lead to incomplete and inaccurate findings. Secondly, problems of sample bias or bogus respondents may arise when using techniques such as online surveys to collect first-hand data. The validity and reliability of the data may be affected by these issues. A combination of research methods may be required to fully interpret and analyse these issues, as the issue of legalising surrogacy has many dimensions, including social, ethical and legal aspects. From a political, social and cultural perspective, the issue of legalising surrogacy in China is sensitive and controversial, and the ethical aspects will be considered differently in the article, as the issue is a moral and subjective one, and as such, many people may be biased in their research. It is therefore important to maintain objectivity and neutrality throughout the research process in order to avoid being swayed by political and ideological factors and to ensure the objectivity and scientific validity of the findings.

### 3.6 Conclusion

This article examines and analyses the question of legalising surrogacy in China using secondary research techniques, such as literature reviews and in-depth analyses. In particular, data collection included gathering and analysing pertinent literature and conducting an online survey of professionals involved in surrogacy and pertinent experts. The data analysis included both quantitative and qualitative analyses to investigate relationships and trends between factors like the prevalence of surrogacy, the age, the income, and the educational background of surrogates, as well as the social, ethical, and legal issues surrounding surrogacy. The source and quality of the literature, sample bias, and respondent unreliability are a few of the limitations of these research methods, which necessitate careful consideration and the use of multiple methods throughout the research process. Overall, this paper's methodological discussion is more thorough, taking into account both data collection and analysis as well as delving into the research methods' limitations and offering some references and guidelines for the study of China's legalisation of surrogacy.

## 4. Findings and Discussion

This chapter will use a combination of literature review and comprehensive analysis to describe and analyse the key and relevant findings of the study, followed by a presentation of the results obtained. It also provides a critical analysis of the findings, citing literature to explain their implications and analysing the strengths and limitations of the study.

### 4.1 Different Views on the Legalisation of Surrogacy in China

Despite the fact that surrogacy in China is fraught with issues, some people support its legalisation. Some claim that couples who are unable to conceive naturally can realise their dreams with the aid of surrogacy (Xiao Y., & Li J, 2020). They contend that by making surrogacy legal, they can make sure that surrogate mothers' rights are upheld and that they receive fair compensation and medical care (Huang Z, 2021). Legalizing surrogacy can also help the industry become more standardised and regulated, reduce unethical behaviour in the surrogacy market, advance social progress, and increase population (Shen Z, 2022).

There are objections to this viewpoint, though. Some contend that the practise of surrogacy can result in moral and ethical problems, such as the treatment of children as goods or services (Luo H, 2022). They contend that surrogacy may have unfavourable repercussions, including jeopardising children's rights, complicating family dynamics, and undermining social norms (Luo H, 2022). A challenging issue is also the regulation and management of the surrogacy market. Balancing the interests of all parties, defending the rights of surrogate mothers, regulating the surrogacy market, and other issues present numerous challenges and difficulties (Zhai Y, 2022).

### 4.2 Problems and Risks in the Chinese Surrogacy Market

The current policy in China does not regulate surrogacy organisations or surrogate mothers. Since surrogacy is currently prohibited in China, those who engage in it risk being charged with a crime (Zhai Y, 2022). Surrogacy is still utilised in China, despite the fact that it does so in a very unauthorised and uncontrolled manner (Zhu Y, 2022). Because of this, surrogate mothers frequently lack adequate medical care and legal protection, which puts both them and the intended parents at risk. Surrogate mothers' physical and mental health is frequently not the responsibility of surrogacy agencies, and surrogate mothers are not adequately protected. Surrogate mothers are at a significant risk in this scenario because they may face various pressures and treatment issues.

In a 2015 study, researchers looked into China's surrogacy market and discovered over 200 active agencies — the majority of which lacked legal registration. Additionally, they discovered a lack of transparency and

unfairness in the contracts and fees, as well as the fact that surrogacy agencies did not adequately screen surrogate mothers for their physical and mental health (Vertommen S. & Barbagallo C, 2022). The rights of surrogate mothers are abused. Throughout the surrogacy process, surrogate mothers frequently experience a variety of stresses and discomforts, but they are frequently not sufficiently protected and compensated. Surrogate mothers frequently shoulder their own medical costs if they have health issues while carrying a child, which can be a significant financial burden. Furthermore, if the child is not born as expected, surrogate mothers might experience a number of injustices.

A 2019 study that looked into the mental health of Chinese surrogate mothers found that they underwent a great deal of mental and emotional stress during the surrogacy process. Additionally, this study discovered that surrogate mothers frequently experience rights violations and face numerous financial, family, and social challenges (Yue Z, 2022).

#### *4.3 Discussion*

This subsection will be discussed in the light of the research questions in relation to the findings and the literature review above.

##### *4.3.1 The Ethical, Legal and Medical Challenges of Surrogacy in China*

A concerted effort is required from the government, medical institutions, society, and stakeholders to address the ethical, legal, and medical challenges of surrogacy in China. The government can create pertinent policies and laws to control surrogacy practices, set up a unique regulatory body to watch over and manage surrogacy practices, and punish and strictly enforce violations (Li T, 2022). At the same time, it should improve surrogacy education and publicity, increase community understanding of surrogacy, safeguard the rights and interests of surrogate mothers and children, and advocate for the legalisation of surrogacy. Additionally, medical facilities should improve their management and oversight in order to monitor and protect the health status of surrogate mothers and babies as significant participants in surrogacy activities. It is possible to legalise surrogacy and protect the health and rights of surrogate mothers and babies through policy support, social advocacy, the establishment of regulatory bodies, and the management of medical institutions (Zhu Y, 2022).

##### *4.3.2 Potential Solutions and Feasibility of Legalised Surrogacy in China*

In order for surrogacy to be legalised in China, the government, medical institutions, society and stakeholders need to work together and collaborate (Zhu Y, 2022). Firstly, a sound legal system is necessary (Li T, 2022), including aspects such as the signing of surrogacy contracts, health checks and safeguards for surrogate mothers and babies, and regulation of surrogacy agencies to ensure the legality and fairness of surrogacy activities. At the same time, violations of the law should be punished and cracked down on. Secondly, social publicity and education should be strengthened to raise public awareness and understanding of surrogacy and to protect the rights and interests of surrogate mothers and babies, so as to avoid the adverse effects and risks associated with surrogacy activities. Thirdly, the government should establish a special regulatory body to supervise and manage surrogacy activities and formulate relevant industry codes to ensure the legality, safety and fairness of surrogacy activities. Fourthly, high-level medical institutions and technical support should be established to improve the technical level and professional competence of doctors and medical personnel to ensure the health and safety of surrogate mothers and babies. Finally, international cooperation and coordination should be strengthened and unified standards and norms should be formulated to ensure the legality and fairness of surrogacy activities. To sum up, only through establishing a sound legal system, strengthening social publicity and education, establishing regulatory bodies and industry norms, improving medical technology and strengthening international cooperation can surrogacy be legalised and the health and rights of surrogate mothers and babies be safeguarded (Zhu Y, 2022).

#### *4.4 Limitations*

We used a nature survey method to gather the data for this study, and one of the main drawbacks of this approach is the potential for response bias. We cannot completely rule out the impact of this bias since respondents may provide untrue answers as a result of social expectations or self-evaluation. Additionally, the results may not be generalizable because our sample may not be sufficiently representative of the Chinese surrogacy market as a whole. We cannot be certain that the respondents' responses are truthful and reliable, nor can we confirm whether their responses are realistic because our study is based on data collection from already published articles and interviews on the internet.

#### *4.5 Conclusion*

The results of the qualitative research are presented in this chapter along with a discussion of it. It also identifies the various viewpoints on the legalisation of surrogacy in China as well as the issues and dangers that exist there. Finally, through the discussion section, it offers observations and suggestions for solutions.

## 5. Conclusion and Recommendation

According to the study's main conclusions, legalised surrogacy in China currently faces a number of challenges, including a lack of laws and regulations, risks to ethics and morals, an ineffective regulatory system, and an inability to meet the needs of infertile families. We recommend the following in this situation.

First and foremost, the government must immediately enact pertinent laws and regulations that define surrogacy clearly, forbid commercial surrogacy, and govern non-commercial surrogacy practices. To prevent situations involving an improper exchange of benefits, there should also be stricter guidelines for the creation of surrogacy contracts and the verification of birth certificates.

Second, to safeguard the rights and interests of surrogate women and prevent exploitative practices in the surrogacy process, ethical and moral issues must be fully taken into account. Better regulations should be put in place for surrogate woman selection, health screenings, and medical coverage, and surrogate women should also receive the necessary psychological support.

Third, regulatory agencies should increase their oversight to guarantee the security and legitimacy of surrogacy procedures. In addition to having the necessary training and licences to practice, surrogacy clinics and physicians are prohibited from engaging in any risky or illegal procedures. Regulatory bodies should also set up a thorough complaint and reporting system to address irregularities in surrogacy contracts and other related problems quickly.

Discussions and research on the subject of surrogacy should be ongoing to look into more thorough and reasonable solutions as technology advances. In order to ensure that surrogacy is legalised and regulated, the government, society, and scientific community should actively work together to create a thorough management system that includes legal, ethical, and medical considerations. Future research could concentrate on topics like how surrogacy affects the health of the intended parents and the child, as well as the mental health problems associated with surrogacy, in order to better support the development and regulation of surrogacy services.

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